



FILED

11-01-06

04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive Framework and to
Examine the Integration of Greenhouse Gas Emissions
Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**REPLY COMMENTS TO CEED'S SUPPLEMENTAL MATERIAL ON
COMMERCE CLAUSE ISSUES ASSOCIATED WITH
THE GREENHOUSE GAS EMISSIONS PERFORMANCE STANDARD
OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC)**

November 1, 2006

Audrey Chang
Natural Resources Defense Council
111 Sutter St., 20th Floor
San Francisco, CA 94104
415-875-6100
achang@nrdc.org

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive Framework and to
Examine the Integration of Greenhouse Gas Emissions
Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**REPLY COMMENTS TO CEED'S SUPPLEMENTAL MATERIAL ON
COMMERCE CLAUSE ISSUES ASSOCIATED WITH
THE GREENHOUSE GAS EMISSIONS PERFORMANCE STANDARD
OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC)**

I. INTRODUCTION

The Natural Resources Defense Council (NRDC) respectfully submits these reply comments to the supplemental materials on Commerce Clause issues presented by the Center for Energy and Economic Development (CEED), in accordance with the "Assigned Commissioner's Ruling: Phase 1 Amended Scoping Memo and Request for Comments on Final Staff Recommendations" (Amended Scoping Memo), dated October 5, 2006, and pursuant to Rules 1.9 and 1.10 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure. NRDC is a non-profit membership organization with a long-standing interest in minimizing the societal costs of the reliable energy services that a healthy California economy needs. In this proceeding, we focus on representing our more than 131,000 California members' interest in receiving affordable energy services and reducing the environmental impact of California's electricity consumption.

The Amended Scoping Memo directs parties to respond to the supplemental information submitted by CEED in their September 8, 2006 comments. In Section B (and related attachments) of those comments, CEED filed supplemental arguments and documents related to the Commerce Clause issues that CEED initially raised in its June 30, 2006 opening brief. We have reviewed CEED's comments, and find no new legal issues raised in their comments.

II. COMMENTS

The CEED supplemental material on Commerce Clause issues includes a rehash of legal objections to the proposed CPUC policy that already have been rebutted thoroughly by NRDC and other parties in opening and reply legal briefs submitted previously in this proceeding. We hereby incorporate by reference our opening (primarily pages 19-27) and reply legal briefs filed on June 30, 2006 and July 11, 2006, respectively.

CEED claims that the greenhouse gas performance standard proposed to be implemented by the Commission violates the Commerce Clause of the U.S. Constitution by asserting that the standard precludes various generation fuels from entering California. On the contrary, the EPS does not have a discriminatory effect on interstate commerce and does not conflict with the federal government's Article I powers. Any effects of the EPS on interstate commerce are neutral, incidental, and greatly outweighed by California's interest in protecting its consumers from the significant financial and reliability risks associated with additional investments in highly carbon-intensive generating technologies.

Most importantly, CEED altogether ignores the CPUC's traditional authority to oversee and guide utilities' resource procurement, which necessarily addresses investment in generation across the vast interstate grid that competes for California utility investments. This is a classic example of "evenhanded regulation to effectuate a legitimate local public interest . . . whose effects on interstate commerce are only incidental." *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970).

And if there were any doubt on this matter, it was removed by the California legislature's findings in SB 1368, which Governor Schwarzenegger signed into law on September 29, 2006. This legislation provides explicit and unambiguous authority for adoption of the policy under consideration in this proceeding, and includes the following dispositive findings (in Section I):

(f) The Public Utilities Commission (PUC) and State Energy Resources Conservation and Development Commission (Energy Commission) both have concluded, and the Legislature finds, that

federal regulation of emissions of greenhouse gases is likely during [the next decade].

(g) It is vital to ensure all electricity load-serving entities internalize the significant and under recognized cost of emissions recognized by the PUC with respect to the investor-owned electric utilities, and to reduce California's exposure to costs associated with future federal regulation of these emissions.

(h) The establishment of a policy to reduce emissions of greenhouse gases, including an emissions performance standard for all procurement of electricity by load-serving entities, is a logical and necessary step to meet the goals of the Energy Action Plan II and the Governor's goals for reduction of emissions of greenhouse gases.

(i) A greenhouse gases emission performance standard for new long-term financial commitments to electrical generating resources will reduce potential financial risk to California consumers for future pollution-control costs.

(j) A greenhouse gases emission performance standard for new long-term financial commitments to electric generating resources will reduce potential exposure of California consumers to future reliability problems in electricity supplies.

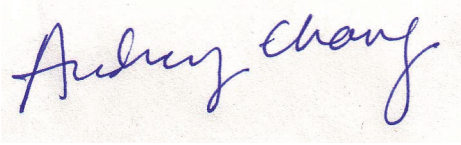
These findings remove any possible doubt about the legitimacy of immediate CPUC action to steer utilities' resource procurement away from resources that create excessive reliability and financial risks to California households and businesses, as a result of these resources' greenhouse-gas emissions intensity. Nothing about such a judgment is inherently discriminatory against out-of-state resources.

III. CONCLUSION

NRDC believes that the greenhouse gas performance standard, as proposed to be implemented by the Commission and established by Senate Bill (SB) 1368, does not in any way violate the Commerce Clause. The standard is both good policy and a prudent, reasonable, and constitutional exercise of the CPUC's Constitutional and statutory authority. The greenhouse gas performance standard is solidly within the bounds of the CPUC's authority, in compliance with state and federal law and the Constitution, and furthers the long-term best interests of California's customers. We strongly urge the Commission to dismiss CEED's arguments as erroneous and to continue implementation without delay of the greenhouse gas performance standard as directed by Senate Bill 1368.

Dated: November 1, 2006

Respectfully submitted,



Audrey Chang
Staff Scientist

Natural Resources Defense Council
111 Sutter St., 20th Floor
San Francisco, CA 94104
415-875-6100
AChang@nrdc.org

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **“Reply Comments to CEED’s Supplemental Material on Commerce Clause Issues Associated with the Greenhouse Gas Emissions Performance Standard of the Natural Resources Defense Council (NRDC)” in the matter of R.06-04-009** to all known parties of record in this proceeding by delivering a copy via email or by mailing a copy properly addressed with first class postage prepaid.

Executed on November 1, 2006 at San Francisco, California.



Shari Walker
Natural Resources Defense Council
111 Sutter St., 20th Floor
San Francisco, CA 94104
415-875-6100
Swalker@nrdc.org